



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 16, 2016

Ms. Amanda Pell  
Open Records Specialist  
Baytown Police Department  
3200 North Main Street  
Baytown, Texas 77521

OR2016-03686

Dear Ms. Pell

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 598369 (PIR #5615).

The Baytown Police Department (the "department") received a request for a specified police report involving a named individual. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). You state the information you have marked relates to a pending criminal investigation and prosecution. Based upon this representation, we conclude the release of the information you have marked under section 552.108(a)(1) would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559, 560-61 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the

information at issue. Accordingly, the department may withhold the information you have marked in yellow under section 552.108(a)(1).<sup>1</sup>

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Further, under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Indus. Found.*, 540 S.W.2d at 682. In considering whether a public citizen’s date of birth is private, the Third Court of Appeals looked to the supreme court’s rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees’ dates of birth are private under section 552.102 of the Government Code because the employees’ privacy interest substantially outweighed the negligible public interest in disclosure.<sup>2</sup> *Tex. Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens’ dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at \*3.

Upon review, we find the information you have marked in blue and the additional information we have marked satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must generally withhold the information you have marked and we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note the requestor may be the authorized representative of one of the individuals whose information is at issue, and may have a right of access to information pertaining to the individual at issue that would otherwise be confidential under common-law privacy. *See* Gov’t Code § 552.023(a) (“person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

<sup>2</sup>Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a).

individuals request information concerning themselves). Because we are unable to determine whether the requestor is the authorized representative of the individual at issue we must rule conditionally. Accordingly, if the requestor is not acting as the authorized representative of the individual specified in the instant request, the department must withhold the information you have marked and we have marked under section 552.101 in conjunction with common-law privacy. However, if the requestor is acting as the authorized representative of this individual, the department may not withhold the information pertaining to the individual at issue under section 552.101 on the basis of common-law privacy. In this instance, the department must withhold remaining information you have marked and we have marked under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130(a). Upon review, we find the department must generally withhold most of the information you have marked and we have marked for withholding under section 552.130. However, upon review, we find some of the information you have marked under section 552.130, which we have marked for release, does not constitute motor vehicle record information and may not be withheld under section 552.130. Additionally, we note section 552.130 protects personal privacy. As stated above, the requestor, may be the authorized representative of one of the individuals whose motor vehicle record information is at issue. If so, the requestor has a right of access to the motor vehicle record information pertaining to this individual under section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, to the extent the requestor is the authorized representative of the individual specified in the request, the requestor has a right of access to the information pertaining to the individual at issue pursuant to section 552.023, and this information may not be withheld from this requestor under section 552.130. In that instance, with the exception of the information we have marked for release, the department must withhold the remaining information you have marked and we have marked for withholding under section 552.130. If the requestor is not the authorized representative of the individual at issue, with the exception of the information we marked for release, the department must withhold the information you have marked and we have marked under section 552.130.

In summary, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. If the requestor is not acting as the authorized representative of the individual specified in the instant request, the department (1) must withhold the information you have marked and we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and (2) except for the information we have marked for release, must withhold the information you have marked and we have marked for withholding under section 552.130 of the Government Code. If the requestor is acting as the authorized representative of the individual at issue, the department may not withhold the marked information pertaining to this individual under section 552.101 on the basis of common-law privacy or section 552.130. The remaining information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Cole Hutchison". The signature is written in a cursive style with a horizontal line striking through the middle of the name.

Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/bhf

Ref: ID# 598369

Enc. Submitted documents

c: Requestor  
(w/o enclosures)